IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 4757 of 1996
Date of Decision: 31.1.2007

Mohinder Singh ...Petitioner

Versus

Paramjit Singh alias Pamma & others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri B.R. Mahajan, Advocate, for the petitioner.

Shri B.S. Guliani, Advocate, for the respondents.

HEMANT GUPTA, J.

The plaintiff-petitioner filed a suit for possession of land measuring 7 kanals 17 marlas and 11 kanals 4 marlas on 11.6.1974. The said suit was decreed by the learned trial Court on 18.4.1975, but in appeal, an application was filed by the defendants for amendment of the written statement. The learned first Appellate Court found that the amendment is being sought simply to elucidate the objections already taken in the written statement and permitted the defendants to amend the written statement. The case was remanded to the learned trial Court for decision afresh after allowing the parties to lead evidence in respect of their respective pleas. Consequently, the judgment and decree passed by the learned trial Court was set aside and the case was remanded to the learned trial Court with the direction that the defendants be allowed to amend the written statement.

After remand, the suit was dismissed in default on

27.2.1978. An application for restoration was filed on 28.2.1978, which was dismissed on 13.11.1981 as the full particulars of the file were not furnished. On 16.11.1981, the plaintiff moved an application for restoration of the application seeking restoration of the suit. The said application was dismissed on 8.11.1986 by the learned trial Court on the ground that the application was not dismissed in default on 13.11.1981. Thereafter, an application was filed on 20.12.1986 for restoration of the suit along with an application for condonation of delay, which has been dismissed by the order impugned in the present revision petition.

It is most unfortunate that the plaintiff has been caught on the legal web as to which would be an appropriate application for restoration of his suit dismissed in default on 27.2.1978, the application for restoration for which was filed on 28.2.1978. The order passed by the learned trial Court on 13.11.1981 dismissing the application for the reason that the full particulars of the file are not furnished, is beyond any comprehension. It was for the trial Court to call for the records consequent to the orders passed by the learned first Appellate Court, remanding the matter to the trial Court for fresh decision. Still the plaintiff has filed an application soon thereafter i.e. 16.11.1981 but the said application was dismissed five years later on 8.11.1986. It is unfortunate that the learned trial Court has taken five years to decide whether the application is for restoration of the suit or for the recall of the order dated 13.11.1981. The subsequent application filed soon thereafter on 20.12.1986 has been dismissed by the learned trial Court on the ground that the same is barred by principle of resjudicata and is also barred by limitation.

The plaintiff got the decree in his favour in the year

1975. More than 30 years later, the application for restoration of the suit is yet to be decided. It is not the fault of the plaintiff which led to the present situation. The circumstances explained on record leave no manner of doubt that no fault can be attributed to the plaintiff in prosecuting the application for restoration of the suit or otherwise.

Consequently, I am of the opinion that the order passed by the learned trial Court on 27.2.1978 dismissing the suit in default and the subsequent orders dated 13.11.1981, 8.11.1986 and 13.8.1996 have caused manifest injustice to the petitioner. Hence, the said orders are set aside. The suit is ordered to be restored to its original number.

The parties, through their counsel are directed to appear before the learned trial Court on 12.3.2007, for further proceedings in accordance with law.

31-01-2007 (HEMANT GUPTA)
ds JUDGE